

University of Pennsylvania Law Review

FOUNDED 1852

Formerly
American Law Register

VOL. 138

JANUARY 1990

No. 3

DEDICATION

CLYDE W. SUMMERS

JANICE R. BELLACE†

When I graduated from Penn Law in 1974, Clyde Summers was unknown to me, beyond a name appearing on one of the leading labor law casebooks. After three years in London, I returned to Philadelphia to discover that Clyde Summers had departed Yale and come to Penn in my absence. Shortly after my return to Penn, I began working on a study of the Landrum-Griffin Act at the Wharton School's Industrial Research Unit. The director of the Unit, commenting that "you know Summers wrote most of the Act," telephoned Professor Summers and asked if I could come to his office and discuss the study with him.

It was with some trepidation that I walked over to the Law School that afternoon. The study was in its early stages, and its outlines were not yet fully conceived. At this stage of my career, I

† Associate Professor of Legal Studies and Management, The Wharton School, University of Pennsylvania; Lecturer in Law, University of Pennsylvania.

already knew that many prominent academics find young assistant professors with half-formed ideas seeking advice something of an occupational nuisance. Anyone who knows Clyde Summers can anticipate the reception I encountered: a straightforward, entirely modest person who genuinely sought to understand what I wanted to study and who earnestly wanted to convey what the statute was meant to achieve. Notions of time slipped into the background as he became engrossed in the subject matter. It was getting dark before I left his office. I walked back to my office, astounded at how generous he had been with his time, how open he had been in the discussion, and how incredibly insightful his suggestions had been. Suddenly, the project seemed both manageable and meaningful.

After that first experience, I came to know Clyde Summers. That experience was typical. Innumerable times I have seen him reply to a request by a complete stranger that he read a manuscript and comment on it. He always unhesitatingly reads the manuscript and seeks to make useful, often detailed, comments. He unfailingly seeks to assist young academics as they grapple with a problematic thesis. The amount of time he expends in assisting others in their work is substantial, and in light of his other commitments, difficult to comprehend. It took me some time before I realized that Clyde Summers is a teacher in the complete sense of the word. For him, the mission of conveying knowledge is not limited to his enrolled students. As a recipient of the University of Pennsylvania's Lindback Award for Distinguished Teaching, his classroom expertise is well-known. What is less well-known is his role in advising countless persons who have become, in effect, "students" of Clyde Summers.

In many ways, it seems inevitable that Clyde Summers made labor law his specialty. The late Sir Otto Kahn-Freund, who pioneered comparative analysis in labor law, once remarked that he regarded labor law as "one of the centrally important branches of the law — the legal basis on which the very large majority of the people earn their living."¹ Of people who specialize in labor law, very few have Clyde Summers' range: from individual rights in the union, to forms of collective representation, to rights of non-union employees. In a sense, for Summers, the individual at work has been the unifying thread of his labor law writings. That is, Summers has proceeded from the assumption that in a democracy individuals have a right to be treated fairly and to participate in the decisions that affect them, and these rights apply even in the workplace. This has

¹ O. KAHN-FREUND, *LABOR AND THE LAW* 2 (2nd ed. 1977).

led Summers to investigate how the collective (the company, the union, co-workers) can limit individual freedom and how the law can serve as a countervailing force. It has also led him to analyze forms of employee representation in an effort to determine whether they allow individuals to participate in decision making.

No effort will be made here to list major works, for a list of notable works of Clyde Summers would begin in the 1940s and continue for pages. One remarkable feature of Summers' work must be noted: his prominence in different areas. While one person may think of Clyde Summers as the leading authority on individual rights and the union, another will think of Summers as the pathbreaker in challenging the employment-at-will doctrine, and yet another will list Summers as one of the most prominent Americans in comparative labor law.

One of Clyde Summers' contemporaries, Professor Benjamin Aaron of the UCLA School of Law once observed that most American scholars in industrial relations and labor law "have virtually no knowledge of similar institutions in other countries."² When I first met Clyde Summers in 1977, I was delighted to find another labor lawyer who was interested in comparative work. My law teachers at the London School of Economics had regularly compared British law to labor law systems in Europe and North America. My own experience had been that American labor law scholars routinely ignored the comparative dimensions of a problem. Clyde Summers, for a very long time, has been a prominent exception. From the time he spent a year in Sweden in the 1950s, he has made consistent use of a comparative approach.

As a colleague has noted, Clyde Summers has used his knowledge of foreign labor law systems "as a source for discovering and testing alternative ways to resolve perceived deficiencies in American labor law."³ Perhaps the most notable example of this approach is his challenge to the employment-at-will doctrine. Thoroughly familiar with laws in various European countries that grant individual employees protection against unfair dismissal, Summers pointed out the peculiarity of the American employment-at-will doctrine and laid down the basic elements of an unfair dismissal statute. His 1976 arti-

² Aaron, *The Comparative Labor Law Group: A Personal Appraisal*, 2 COMP. LAB. L. 228, 234-35 (1977).

³ Goldman, *Methods of Comparative Labor Law in the United States*, 7 COMP. LAB. L. 319, 328 (1986).

cle in the *Virginia Law Review* is commonly cited as the seminal article in this area.⁴

From the time Clyde Summers began his comparative work, he has been committed to increasing the numbers of American labor lawyers who are aware of foreign labor law developments. He was one of the founding members of the U.S. National Branch of the International Society for Labor Law and Social Security. In 1985, when asked whether he would take over the editorship of the *Comparative Labor Law Journal*, he quickly agreed notwithstanding the great deal of time and effort this editorship would entail and the formidable obstacles presented by a slender budget. He did so because the editorship of the Journal presented him with the opportunity of bringing before American readers articles that he believed merited their attention. Moreover, he saw the Journal as a way to involve his students more deeply in comparative work. His stature in the field was recognized when he was elected in 1988 as President of the U.S. Branch of the International Society for Labor Law and Social Security.

Besides his unhesitating help to students and strangers, Clyde Summers is known for supporting and stimulating his friends and colleagues. He has travelled throughout the world, to study, to lecture, and to participate actively in seminars and conferences. From these travels, he has a worldwide circle of friends, many of whom have enjoyed his hospitality in Philadelphia. He and his wife, Evelyn, have opened their home to many friends and colleagues, all of whom have enjoyed their gracious, direct, and warm interest. Clyde and Evelyn are close partners, of equal and independent intellectual capacities. Those who know Evelyn are aware that she has played an inseparable part in his achievements.

In describing the value of comparative work, Clyde Summers has written:

Most of us are bound by our unconscious premises and have difficulty envisioning what we have not seen. When we have known only one labor law system, we are captives of its purported premises and their claimed consequences. We cannot easily imagine that essential parts might be otherwise; we do not see many of the questions most worth asking.⁵

⁴ See Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 VA. L. REV. 481 (1976).

⁵ Summers, *Comparisons in Labor Law: Sweden and the United States*, 7 INDUS. REL. L.J. 1, 27 (1985).

Those who know Clyde Summers assume that his formal retirement is just that, retirement in form only. His students, many of whom never had him as a classroom teacher, continue to learn from his writings, for Clyde Summers continues to ask the questions most worth asking.

